UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/091,606	03/04/2002	Brad K. Winking	020375-005700US	7664

20350   7590   01/25/2017
KILPATRICK TOWNSEND & STOCKTON LLP
Mailstop: IP Docketing - 22
1100 Peachtree Street
Suite 2800
Atlanta, GA 30309

EXAMINER
GOTTSCHALK, MARTIN A

ART UNIT	PAPER NUMBER
3693	

NOTIFICATION DATE	DELIVERY MODE
01/25/2017	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipefiling@kilpatricktownsend.com
jlhice@kilpatrick.foundationip.com

UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

Ex parte BRAD K. WINKING,
DAVID J. DELAWTER, and JOHN M. PATTON

_____

Appeal 2015-001274
Application 10/091,606[1]
Technology Center 3600

_____

Before MICHAEL C. ASTORINO, SHEILA F. McSHANE, and
MATTHEW S. MEYERS, *Administrative Patent Judges*.

McSHANE, *Administrative Patent Judge*.

DECISION ON APPEAL

The Appellants seek our review under 35 U.S.C. § 134(a) of the Examiner's

final decision to reject claims 1–14 and 33–45. We have jurisdiction under 35

U.S.C. § 6(b).

We AFFIRM.

_____

BACKGROUND

The invention relates to credit card payments, where a client is able to submit the payment transactions in different formats. Specification, hereafter "Spec.," ¶¶ 2, 10. The payment transactions can be processed using either a batch process or a right-time process, depending on the submission format. *Id.* ¶ 10.

Representative method claim 1 is reproduced from page 16 of the Appeal Brief (Claims App.) as follows, with emphasis added to the disputed limitations:

1. A system for processing *account payments*, comprising:

a computer system comprising computer hardware, the computer system specially programmed to

receive one or more payment transactions from a client, each payment transaction being received in one of at least two submission formats, the utilized submission format for each respective payment transaction dictating the processing of the payment transaction on a batch basis or on a real-time basis;

determine, for each of the payment transactions, based at least in part on the submission format of the respective transaction, whether the payment transaction is to be processed on a batch basis or on a real-time basis;

invoke a real-time process to process payment transactions that are determined to be processed on a real-time basis, the real-time process being invoked upon submission of the payment transactions that are determined to be processed on the real-time basis; and

invoke a batch process to process payment transactions that are determined to be processed on a batch basis, the batch process being invoked at a designated time in a processing cycle without regard to timing of submission of the payment transactions that are determined to be processed on the batch basis;

wherein for each payment transaction processed by the real-time process, available credit relative to a corresponding account is adjusted in real-time based on information included in such payment transaction;

and wherein a payment transaction represents either a payment to be credited against a corresponding account or a reversal to be performed

against the corresponding account to retract a previously made payment;

and wherein for a payment transaction that is a payment to be credited against a corresponding account, the available credit to the corresponding account is increased by at least a portion of the amount of the payment received.

In a Final Rejection, the Examiner rejects under 35 U.S.C. §103(a): claims 1–4, 13, 14, 33–36, 44, and 45 as unpatentable over Behrenbrinker[2] and Muehlberger[3]; claims 5–7 and 37–39 as unpatentable over Behrenbrinker, Muehlberger, and Couch[4]; claims 8–10, 12 and 40–42 as unpatentable over Behrenbrinker, Muehlberger, and Alvin[5]; and, claims 11 and 43 as unpatentable over Behrenbrinker, Muehlberger, and Campbell[6]. Final Action, hereafter "Final Act.," 2–13, mailed November 14, 2013; Answer, hereafter "Ans.," 4–16, mailed September 5, 2014. In the Answer, the Examiner entered a new ground, rejecting claims 1–14 and 33–45 under 35 U.S.C. § 101 as directed to non-statutory subject matter. Ans. 3–5. The Appellants exercised the option to maintain the appeal with the filing of a Reply Brief, with the Reply Brief addressing each ground of rejection under 37 C.F.R. § 41.39(b)(2). Reply Brief, hereafter "Reply Br.," 2–17, filed November 4, 2014.

DISCUSSION

The Appellants argue the rejection under § 101 of all the claims on the same issues. *See* Reply Br. 2–12. We will use claim 1 as representative. *See* 37 C.F.R. § 41.37(c)(1)(iv). For the § 103 rejections, independent claims 1 and 33 are argued

---

[2] US Publication 2002/0062279 A1, published May 23, 2002.
[3] US Patent 5,285,382, issued February 8, 1994.
[4] US Patent 4,650,977, issued March 17, 1987.
[5] US Patent 7,139,731 B1, issued November 21, 2006.
[6] US Patent 4,774,664, issued September 27, 1988.

on similar issues, and although the Appellants assert that claims 2–14, 34–39, 40–45 rise and fall with the independent claims, additional argument are also presented for claims 4, 8–10, 12, 36, and 40–42. Appeal Br. 12–14. We will address the claims in a similar manner.

35 U.S.C. § 101

The Examiner finds that representative claim 1 is directed to non-statutory subject matter that does not amount to significantly more than an abstract idea because the claim is directed to processing payments received to be applied to an outstanding balance of an account, which is a fundamental economic practice. Ans. 3. The Examiner also finds that additional claim elements amount to no more than instructions to implement the idea on a computer, or the recital of a generic computer structure to perform generic functions that are well-understood, routine, and conventional, and therefore do not transform the abstract idea into patent eligible subject matter. *Id.* at 4.

The Appellants point to the June 14, 2014 preliminary guidance[7] issued after the Supreme Court's decision in *Alice Corporation Pty, Ltd. v. CLS Bank International*, 134 S. Ct. 2347 (2014) ("*Alice*"), arguing that the guidance does not properly represent the test articulated in *Alice*. Reply Br. 4–6. The Appellants assert that the rejection of the claims is conclusory and, more particularly, the Examiner's finding that payment processing is a fundamental business practice is unsupported by evidence. *Id.* at 6–7. The Appellants also contend that the claim is not directed to an abstract idea. *Id.* at 7–8. The Appellants concede that processing of payments has been done by businesses for many years but argue, however, that the processing as claimed requires infrastructure, cannot be done

---

[7] "Preliminary Examination Instructions in view of the Supreme Court Decision in *Alice Corporation Pty. Ltd. v. CLS Bank International, et al.*" Memorandum to the Examining Corps, June 25, 2014.

mentally, and is distinguishable from such concepts as risk hedging[8] and intermediated settlements[9]. *Id*. at 7. The Appellants assert that the Examiner's finding that payment processing is a "fundamental economic practice" is overly broad and that "not everything a business does is an abstract idea." *Id*. at 7–8.

The Appellants further argue that even if the finding of an abstract idea is adopted, the claim at issue would not preempt the use of the underlying idea, in that it would not prevent others from processing payments using other techniques. Reply Br. 8–9. The Appellants allege that the claim includes enough detail to transform it into patent eligible subject matter. *Id*. at 9. It is also contended that the claim contains "significantly more" because it is limited to a practical application, and require more than a generic computer performing generic computer functions. *Id*.

We find no reversible error with the Examiner's findings. To provide context, 35 U.S.C. § 101 provides that a new and useful "process, machine, manufacture, or composition of matter" is eligible for patent protection. The Supreme Court has made clear that the test for patent eligibility under Section 101 is not amenable to bright-line categorical rules. *See Bilski v. Kappos,* 130 S. Ct. 3218, 3229–30. There are, however, three limited, judicially-created exceptions to the broad categories of patent-eligible subject matter in § 101: laws of nature; natural phenomena; and abstract ideas. *See Mayo Collaborative Services v. Prometheus Labs., Inc.,* 132 S. Ct. 1289, 1293 (2012).

---

[8] The Appellants refer to § 101 issues examined in *Bilski v. Kappos*, 561 U.S. 593 (2010), wherein the Supreme Court found the concept of hedging was an abstract idea.

[9] The Appellants refer to § 101 issues examined in *Alice*, wherein the Supreme Court found the concept of intermediated settlement was an abstract idea.

In *Alice*, the Supreme Court reiterated the framework set forth previously in *Mayo*, "for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of these concepts." *Alice*, 134 S. Ct. at 2355 (citation omitted). Under *Alice*, the first step of such analysis is to "determine whether the claims at issue are directed to one of those patent-ineligible concepts." *Id.* (citation omitted). If determined that the claims are directed to a patent-ineligible concept, the second step in the analysis is to consider the elements of the claims "individually and 'as an ordered combination'" to determine whether the additional elements "'transform the nature of the claim' into a patent-eligible application." *Id.* (citing *Mayo*, 132 S. Ct. at 1291, 1297). In other words, the second step is to "search for an 'inventive concept'—i.e., an element or combination of elements that is 'sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the [ineligible concept] itself.'" *Id.* (citing *Mayo*, 132 S. Ct. at 1294).

With this context in mind, we evaluate the Examiner's rejection of the claim at issue.

Claim 1 is directed to a system "for processing account payments," and the Appellants concede that businesses have processed payments for many years. *See* Reply Br. 7. The Appellants argue that this processing requires infrastructure, cannot be done mentally, and is distinguishable from such concepts found to be abstract such as risk hedging and intermediated settlements. *Id.* We are not persuaded by these arguments for the following reasons. The claim is directed to "processing account payments" by "receiv[ing] one or more payment transactions from a client," where the payment can be provided in a format indicating that it is to be processed on "a real time basis" or on "a batch basis," and, if it is "real-time" basis, then the available credit is adjusted in real-time, and if it is a "batch-basis" payment, then the "batch process [for crediting the account] being invoked at a

designated time in a processing cycle without regard to timing of submission."
These steps could be done without the use of infrastructure, and by such methods
as a client in a bank submitting a payment to an account requiring payment, and
requesting that the payment be credited in real-time (contemporaneously) or at a
later time when account updating is typically done at a designated time. The
Appellants fail to provide explanation contrary to the Examiner's findings that the
steps of the process as claimed were previously known as a fundamental economic
practice. Additionally, our reviewing court has found that if a method can be
performed by human thought alone, or by a human using pen and paper, it is
merely an abstract idea and is not patent-eligible under § 101. *CyberSource Corp.
v. Retail Decisions, Inc.*, 654 F.3d 1366, 1373 (Fed. Cir. 2011) (". . .a method that
can be performed by human thought alone is merely an abstract idea and is not
patent-eligible under § 101."). These processes remain unpatentable even when
automated to reduce burden to the user of what once could have been done with
pen and paper. *Id.* at 1375 ("That purely mental processes can be unpatentable,
even when performed by a computer, was precisely the holding of the Supreme
Court in *Gottschalk v. Benson*, [409 U.S. 63 (1972)].").

The Appellants also argue that the Examiner was required to provide
evidentiary support that payment processing is a fundamental business practice.
Reply Br. 6–7. Contrary to the Appellants' assertion, we find that the Examiner
considered in the findings that the steps of the claim are directed to processing
payments received to be applied to an outstanding balance of an account, and was
not required to proffer additional extrinsic evidence in support of the finding. *See,
e.g., Mortgage Grader, Inc. v. First Choice Loan Servs. Inc.*, 811 F.3d 1314, 1325
(Fed. Cir. 2016).

As to the second step of the *Alice* analysis, the Appellants contend that the
claim contains "significantly more" because it is limited to a practical application,

and requires more than a generic computer performing generic computer functions.
The Appellants fail to provide support for their contention that anything more than
a conventional computer would be required to perform the claimed functions. We
therefore do not find the Appellants' arguments to be persuasive. *See Alice*, 134
S.Ct. at 2359 (noting, in carrying out the second step, that the "the relevant
question is whether the claims here do more than simply instruct the practitioner to
implement the abstract idea ... on a generic computer"); *Dealertrack, Inc. v. Huber*,
674 F.3d 1315, 1333-34 (Fed. Cir. 2012) ("Simply adding a 'computer aided'
limitation to a claim covering an abstract concept, without more, is insufficient to
render [a] claim patent eligible.").

Finally, we are not persuaded by the Appellants' argument that the claim
will not preempt the underlying idea of processing payments using other
processing methods. Although it may be true that there are other methods to
process payments, that issue is not dispositive as to whether the claim is patent
eligible. *See Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1377
(Fed. Cir. 2015) ("While preemption may signal patent ineligible subject matter,
the absence of complete preemption does not demonstrate patent eligibility.").

35 U.S.C. § 103

Claims 1–3, 5–7, 11, 13, 14, 33–35, 37–39, and 43–45

The Appellants argue that neither Behrenbrinker nor Muehlberger disclose
payment transactions as claimed because Behrenbrinker teaches the sorting of
purchase transactions, and Muehlberger teaches preauthorization of credit purchase
transactions. Appeal Br. 7–10. More specifically, the Appellants allege that the
prior art does not disclose receipt of payment transactions in one of at least two
submission formats. *Id*. at 8–9. The Appellants contend that although
Behrenbrinker discloses that customer payments may be credited toward an
account, with the payment allocated to different balance segments, it does not

describe processing payments in real time because it refers to a process that ends before any payment transactions are received. *Id*. at 9–10 (citing Behrenbrinker ¶ 31, Fig. 3, step 172). The Appellants also argue that Muehlberger, the prior art relied upon to teach the "submission format" of the claims, deals with purchase transactions, not payment transactions. *Id*. at 10. The Appellants further allege that modifying Behrenbrinker's balance rules for faster processing of payments, as the Examiner finds, represents impermissible hindsight, and the purported saving on communication costs are illusionary because the balance rules are implemented after the receipt of purchase transactions, and the issuer has no control over when the purchase transactions may be submitted by a merchant, therefore not bearing on the cost of the transaction. *Id*. at 11.

Upon consideration of the evidence on this record in light of the arguments advanced by the Appellants, we find that the Appellants have not identified reversible error in the Examiner's determination that the claims are unpatentable under § 103. Accordingly, we sustain the Examiner's rejection of the claims for the reasons set forth in the Final Action and the Answer. We add the following primarily for emphasis.

In the rejection of the claims, the Examiner relies upon, in part, paragraphs 30 and 31 of Behrenbrinker stating:

> [0030] Once the processor 32 allocates the incoming transaction 34 to the appropriate balance segment 36, the terms and conditions 48 associated with the balance segment 36 are applied to the balance of that segment (Block 170). *The application of the terms and conditions (Block 170) include processing the accruing of credits, debits, and interest associated with each balance segment. The customer payments, accounted for as a credit toward the account, may designate portions of the payment to be allocated to any of the balance segments*, or the payment may be automatically designated to one or more balance segments in a predetermined order, amount and/or percentage.

> [0031] Finally, the system 30 may generate a *report/bill that details all or a portion of the masterfile 38, including balance segment balances and transaction histories, for review by the customer or card issuer* (Block 172). The report/bill generation (Block 172) includes, for example, printed, graphical, and electronic representations of the information in the masterfile 38. *It should be noted that the various actions of the above-described transaction processing method may be substantially performed over a short time duration or in real-time, or each of the various actions may be performed at a different times, such as in batch processes.* Further, the actions may be performed in any number of varying orders to accomplish the same final result.

Behrenbrinker ¶¶ 30, 31 (emphasis added).

The Examiner, referring to paragraphs 30 and 31 of Behrenbrinker, finds that payment crediting an account balance is one of the "various actions of the above-described transaction processing method," and that "balance rules" may be applied to incoming customer payments, and an incoming payment may be considered to be "so designated to be a type of a submission format." Final Act. 3–4. Upon consideration of Behrenbrinker's disclosures, we find the Examiner's findings to be reasonable, and we are not persuaded by the Appellants' arguments. Although we agree that Behrenbrinker's invention concerns balancing transactions amongst multiple balance segments, a fair reading also indicates that it discloses more broadly the receipt of payment transactions, and their processing on a real-time or batch basis. We also find that the Examiner's findings concerning Muehlberger's teachings of a system for processing credit card transactions where the transaction's format invokes a rule are supported by the prior art. *Id.* at 4–5 (citing Muehlberger 1:55–2:2, 5:29–39, Figs. 5 and 6). In light of our determination the Examiner's findings that Behrenbrinker's disclosures support the teaching of the receipt and processing of payment transactions, we are also not persuaded by the Appellants' arguments relating to the Examiner's findings related to modifying Behrenbrinker with the rule teaching of Muehlberger to provide an

10

incentive for a customer to use the system to get real-time payment in order to free available credit for a cardholder, and to take advantage of reduced communications costs. *See id.* at 5.

We therefore sustain the rejections of claims 1–3, 5–7, 11, 13, 14, 33–35, 37–39, and 43–45 under 35 U.S.C. § 103.

Claims 4 and 36

Claims 4 and 36 include the additional limitation where a "payment history" is taken into account when deciding whether to invoke real-time processing. *See* Claims App. 17, 20. The Appellants argue that the Examiner's reliance on paragraph 30 of Behrenbrinker is insufficient to teach this limitation. Appeal Br. 12–13. The Examiner finds that for each transaction, the available credit is considered ("application of the terms and conditions (Block 170) include processing the accruing of credits, debits, and interest"). *See* Final Act. 9, Ans. 24 (citing Behrenbrinker ¶ 30). We determine that the prior art and Examiner's rationale for rejection, including the issue related to payment transactions, do not reflect impermissible error for the reasons discussed above, and we therefore sustain the rejections of claims 4 and 36.

Claims 8–10, 12, and 40–42

Claim 8 includes the additional limitation that there is an "update in real-time one or more fraud attributes … for each payment transaction processed by the real-time process based on information included in the payment transaction," and claim 9 includes the limitation that the "fraud attributes" are "forwarded to a fraud prevention system." *See* Claims App. 17–18. Claims 40 and 41 include similar language. *See id.* at 21. The Examiner finds that Alvin teaches a "Multi-Level Fraud Detector," and it "specifically demonstrate[s] [] that it is well-known for a transaction processing system to use fraud detection as part of its processing method," and the claim limitations are therefore taught by the combination Alvin

with Behrenbrinker. *See* Final Act. 8–12, Ans. 24–25 (citing Alvin, col. 8). The Appellants allege that Alvin's system does not involve updating fraud attributes based upon payment transaction information. Appeal Br. 13–14. We find that the Appellants have not identified reversible error in the Examiner's determinations because the references, including Behrenbrinker's teachings regarding payment transactions as discussed above, considered in combination, support the Examiner's findings.

The Appellants also allege that the rejections of claims 10, 12, and 42 should be reversed because Alvin does not teach the limitations relating to forwarding information relating to a payment request to customer service because Alvin does not disclose forwarding information from a payment transaction. We find no reversible error with the Examiner's findings for the same reasons discussed for claims 8, 9, 40, and 41.

We therefore sustain the rejections of claims 8–10, 12, and 40–42.

SUMMARY

The rejection of claims 1–14 and 33–45 under 35 U.S.C. § 101 is affirmed.

The rejections of claims 1–14 and 33–45 under 35 U.S.C. § 103(a) are affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED